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Before Hearing Examiner
Gary N. McLean

**BEFORE THE HEARING EXAMINER
FOR SAN JUAN COUNTY**

In the Matter of the Shoreline Substantial)
Development filed by)
ORCA DREAMS LLC,)
Applicant)
*[Project: To construct a viewing pavilion, a tea)
house, and three sets of stairs to the beach on)
portions of the applicant's 40-acre property, on)
San Juan Island]*)
_____)

File No. PSJ000-17-0011

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION APPROVING PORTIONS
OF A SHORELINE SUBSTANTIAL
DEVELOPMENT PERMIT
APPLICATION, SUBJECT TO
CONDITIONS**

S.J.C. DEPARTMENT OF

SEP 05 2018

I. SUMMARY OF DECISION.

COMMUNITY DEVELOPMENT

All portions of the Shoreline Substantial Development Permit application submitted on behalf of Orca Dreams LLC for a viewing pavilion, a tea-house, and proposed beach access Stairs No. 1 and Stairs No. 2 are approved subject to conditions; the portion of the application to authorize beach access Stairs No. 3 is denied.

The proposed project is subject to compliance with all applicable development, design, building code, engineering and other regulations, including without limitation those requiring verification of performance, inspections, and maintenance associated with conditions or mitigation measures that might be imposed consistent with this Decision or any subsequent approval issued by any state or federal agency or county department with jurisdiction over a particular aspect of the Project as the development review and possible construction processes unfold.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DECISION – APPROVING PORTIONS OF ORCA
DREAMS LLC SHORELINE SUBSTANTIAL
DEVELOPMENT PERMIT APPLICATION FOR A
PAVILION, TEA HOUSE, AND BEACH STAIRS,
SUBJECT TO CONDITIONS – PSJ000-17-0011**

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2 **II. APPLICABLE LAW, RELEVANT CODE PROVISIONS.**

3 The pending application was accepted and reviewed under provisions of the
4 County's Shoreline Master Program that were in effect prior to October 30, 2017. The
5 application was filed in July of 2017. (*Staff Report, page 17; Ex. 12*).

6 **Jurisdiction:** Under SJCC 18.80.110 and 18.80.020, at Table 8.1, the Hearing
7 Examiner is given the authority to hold open-record pre-decision public hearings and issue
8 decisions regarding shoreline permits, including shoreline substantial development permits,
9 shoreline conditional use permits, and shoreline variances.

10 **Burden of Proof:** Under SJCC 18.80.010(A), "Shoreline Permits" are specifically
11 listed as "Project Permits" covered by the provisions of SJCC Chapter 18.80 re: application,
12 notice, review and appeal requirements for the County's Unified Development Code, which
13 is found in Title 18 of the SJCC and includes Chapter 18.50, the County's Shoreline Master
14 Program. SJCC 18.80.040(B) reads as follows:

15 *"[t]he burden of proof is on the project permit applicant. The project permit application
16 must be supported by evidence that it is consistent with the applicable state law, County
17 development regulations, the Comprehensive Plan, and the applicant meets his burden of
18 proving that any significant adverse environmental impacts have been adequately analyzed
19 and addressed."*

20 **Standard of Review:** SJCC 2.22.210(H) explains that: "for an application to be
21 approved, a preponderance of the evidence presented at the hearing must support the
22 conclusion that the application meets the legal decision criteria that apply."

23 **Requirement and Review Criteria for a Shoreline Substantial Development**
24 **Permit:** "Substantial Development" is defined in RCW 90.58.030(3)(e) and SJCC
25 18.20.190. There is no dispute that the pending project meets the definition for a
26 'substantial development.' Substantial developments proposed in shoreline areas of San
27 Juan County require a Substantial Development Permit. See SJCC 18.50.020(E)(2) ("*No
28 substantial development may be undertaken unless a valid shoreline substantial
29 development permit is first issued by the County...*"). The approval criteria for a Shoreline
30 Substantial Development Permit application is set forth in SJCC 18.80.110(H), which reads
31 as follows:

32 **18.80.110(H). Criteria for Approval of Substantial Development Permits.** A shoreline

1 substantial development permit shall be granted by the County only when the applicant
meets his burden of proving that the proposal is:

2 1. Consistent with the policies of the Shoreline Management Act and its implementing
3 regulations, Chapter 90.58 RCW and Chapter 173-27 WAC, as amended;

4 2. Consistent with the policies and regulations of the Shoreline Master Program in Chapter
18.50 SJCC;

5 3. Consistent with this chapter;

6 4. Consistent with the applicable sections of this code (e.g., Chapter 18.60 SJCC);

7 5. Consistent with the goals and policies of the Comprehensive Plan; and

8 6. All conditions specified by the hearing examiner to make the proposal consistent with
9 the master program and to mitigate or avoid adverse impacts are attached to the permit.

10 **Review Criteria for the Department of Ecology:** Finally, if the Examiner approves
11 or denies the Shoreline Permit, such decision must be forwarded to the Department of
12 Ecology and the Attorney General, for state review and any appeals of the Shoreline Permit,
13 in accord with Washington Shoreline Management regulations found in WAC 173-27-130.
14 This Decision is subject to review and approval, approval with conditions, or denial by the
15 Washington Department of Ecology within thirty days of submittal by the County. WAC
16 173-27-130, and -200. Ecology's review criteria for Shoreline Substantial Development are
17 found at WAC 173-27-150. The San Juan County review criteria for the requested
18 shoreline permit is consistent with and substantially similar to those that will be used by the
19 Department of Ecology.

17 III. RECORD.

18 The Record for the matter includes all application materials and exhibits marked and
19 numbered during the course of the public hearing. Copies of all materials in the record and
20 a digital audio recording of the open-record hearing conducted for this application are
maintained by the Community Development Department.

21 **Exhibits:** Before the public hearing, County staff issued a Staff Report (*Exhibit A*)
22 dated June 11, 2018, which included 14 exhibits, numbered and described as Exhibits 1
23 through 14 on pages 19 and 20 of the Staff Report. Without objection, the Staff Report and
24 the following exhibits attached and referenced therein were accepted by the Examiner as
part of the Record:

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- 1 1. Request for review;
- 2 2. Application cover sheet;
- 3 3. Determination of Nonsignificance;
- 4 4. Environmental checklist;
- 5 5. Application materials;
- 6 6. Code interpretation PINT00-16-0006 dated December 9, 2016, issued by Director Erika Shook;
- 7 7. Fisheries Impact Assessment dated January 25, 2016 by Fairbanks Environmental Services, Inc.;
- 8 8. Fisheries Impact Assessment Addendum A date February 9, 2018 by Fairbanks Environmental Services, Inc.;
- 9 9. Pre-October 30, 2017 Shoreline Master Program SJCC 18.50.020;
- 10 10. UW Friday Harbor Labs comment letter dated April 30, 2018 from Dr. Megan Dethier;
- 11 11. Response to UW FHL comment letter dated April 30, 2018 from Francine Shaw;
- 12 12. Posting and notification materials including legal ad;
- 13 13. Shoreline Impact Assessment and Restoration Plan dated August 2014 by Northwest Ecological Services, LLC;
- 14 14. Permit receipt dated July 26, 2017;

15 At the public hearing, the following additional items were accepted and entered into the record:

- 16 15. Orca Dreams LLC Shoreline Restoration Plan Annual Report, dated December 13, 2017;
- 17 16. Illustrative exhibits used at the hearing, generated from pages found in other exhibits already included in the Record;
- 18 17. Email from Mr. Hanson; and
- 19 18. Photos depicting where top of Staircase 3 would be located.

20 **Hearing Testimony:** The following individuals presented testimony under oath at the duly noticed open record public hearing held on June 27, 2018:

- 21 1. Julie Thompson, the assigned Planner for San Juan County, who prepared the Staff Report for the pending application;
- 22 2. Francine Shaw, the applicant's Agent and Land Use Consultant; and
- 23 3. Dave Honeywell, the applicant, owner, member of Orca Dreams LLC.

24
25 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND**
26 **DECISION – APPROVING PORTIONS OF ORCA DREAMS LLC SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT APPLICATION FOR A PAVILION, TEA HOUSE, AND BEACH STAIRS, SUBJECT TO CONDITIONS – PSJ000-17-0011**

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1 Ms. Thompson opened the hearing with a summary of the Staff Report, the staff
2 process in reviewing the matter and consideration of comments received, concluding with
3 their recommendation to approve most portions of the application, subject to conditions,
4 noting that Staff recommends denial of the request to build the third set of beach stairs. Ms.
5 Shaw summarized the projects covered by this application, using maps and illustrations to
6 assist the Examiner and audience members in understanding the details and locations
7 associated with each project. The applicant, Mr. Honeywell, was present at the hearing,
8 and spoke on his own behalf, noting that his family now uses dirt/unimproved trail
9 pathways that were created long ago when his property was the old Mar Vista resort, and
10 that the proposed beach stairs should benefit the area, by providing a more permanent,
11 improved route for people to use when heading down to and up from the beach area which
12 lies beneath homes developed above. No one submitted any expert reports or other written
13 evidence that would rebut or credibly question the recommended findings and conditions of
14 approval included in the Staff Report.

9 Upon consideration of all the evidence, testimony, codes, policies, regulations and
10 other information contained in the file, the undersigned Examiner issues the following
11 Findings, Conclusions, and Decision.

12 IV. FINDINGS OF FACT.

13 Based on the record, the Examiner issues the following findings of fact:

14 1. Any statements contained in any previous or following sections of this Decision that
15 are deemed to be Findings of Fact are hereby adopted as such and incorporated by
16 reference.

17 2. The applicant, Orca Dreams LLC, is an entity established by the Honeywell family.
18 The Hearing Examiner is familiar with the applicant and the Honeywell family's property
19 at issue in this matter, having visited a portion of the property in connection with an
20 unrelated building permit appeal and studied numerous exhibits and reports regarding the
21 property as part of another shoreline permit application and SEPA appeal hearing process
22 that spanned multiple days in late December of last year, with extensive post-hearing
23 briefing that extended into early 2018. (*See* Decision issued in March of 2018 denying
24 FOSJ Appeal of Orca Dreams' Demolition and Building Permits to remove and replace an
25 existing cabin – File No. PAPL00-17-0007; and Decision issued in April of 2018 on UW
26 and Sundberg, et al. appeals of SEPA MDNS Re: Orca Dreams LLC Application for
Shoreline Permit for New Dock and Desalination System – File Nos. PSJ000-17-0003
(SSDP), and PAPL000-17-0010 and -0012 (Appeals)).

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1 3. The Examiner takes official notice of a Washington Court of Appeals opinion
2 involving the applicant and actions that occurred on their property several years ago. That
3 decision, *Honeywell v. Dep't of Ecology*, 200 Wn. App. 1068 (Div. I, 2017), provides some
4 background information that provides context in reviewing the pending application. The
5 following findings, nos. 4 - 9, are derived from paragraphs 2-8 of the Facts section in the
6 Court of Appeals decision.

7 4. In July 2013, the Honeywell's purchased 30 acres of land on the southwestern
8 shoreline of San Juan Island after winning the Powerball lottery. They later purchased 10
9 more acres. The Honeywell's intended to develop the property into a family retreat,
10 including building a new primary residence. The waters adjacent to the Honeywell's
11 property are categorized as a "shoreline of statewide significance" under the SMA.

12 5. In the fall of 2013, the Honeywell's hired Ben Engle to trim brush on the property.
13 Engle worked on the property extensively, and the Honeywell's paid him and his crew over
14 \$50,000.

15 6. On December 13, 2013, John Genuich, the chief building official for San Juan
16 County (County), responded to a complaint of tree cutting on the Honeywell's property.
17 Genuich saw that approximately 200 yards of hillside along the slope had been completely
18 cleared of trees and vegetation. He posted a stop work order.

19 7. On December 14, 2013, David Honeywell observed the condition of the hillside for
20 the first time. The Honeywell's then began to rectify the damage.

21 8. On December 16, 2013, county code enforcement officer Christopher Laws and
22 DOE supervisor Paul Anderson visited the Honeywell's property. Laws and Anderson
23 documented the damage. Laws posted a county emergency order, which required the
24 Honeywell's to stop work on the shoreline and install sediment and erosion controls. The
25 DOE and the County agreed that the County would lead the enforcement action and that the
26 DOE would provide technical assistance.

9. On February 6, 2014, the County issued a notice of violation (NOV) for the
shoreline clearing. The County assessed the Honeywell's and Engle separate \$1,000
penalties. The Honeywell's were required to develop a restoration plan.

10. The restoration plan is highly relevant in addressing a portion of the pending
shoreline permit application, because the Staff Report explains that one of the 3 proposed
sets of beach stairs, known as "Beach Stair 3" *"is proposed to be built in the golden
paintbrush restoration area as identified in the "Shoreline Impact Assessment and
Restoration Plan" dated August 2014 and prepared by Northwest Ecological Services,*

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1 LLC., Exhibit 13.

2 11. The Staff Report notes that *“Building a set of stairs in a restoration area of*
3 *Federally Threatened plants (Castilleja levisecta, golden paintbrush) seems contrary to*
4 *restoration. In the case of Beach Stair 3, potential adverse impacts should be avoided*
5 *altogether by not taking any action”*. [emphasis added].

6 12. There is no dispute that none of the other projects addressed in this shoreline permit
7 application would directly affect the golden paintbrush restoration area on the applicant’s
8 property – only Beach Stair 3 would run directly through a part of the golden paintbrush
9 restoration area. For reasons explained in the Staff Report and in this Decision, all parts of
10 the application, other than Beach Stair 3, merit approval.

11 **Description of Entire Proposal**

12 13. The entire proposal addressed in the application includes “Accessory Structures”
13 and “Beach Access Structures,” all as described and detailed in the application materials
14 and the Staff Report.

15 14. The applicant identifies the two Accessory Structures as a ‘tea-house’ and a
16 “viewing pavilion.” The tea-house and viewing pavilion will be built in the same footprint
17 as two existing cabins on a part of the applicant’s property, after the cabins are demolished.
18 The cabins were part of the former Mar Vista Resort that once operated on the site, on tax
19 parcel number 340411005.

20 15. The proposed tea-house will be 624 square feet and 16 feet tall. It will replace the
21 existing 629 square foot resort cabin at 54 Island Marble Lane within the same footprint. It
22 will include a bathroom and a separate shower accessible from outside the building. The
23 proposed viewing pavilion will be 627 square feet and 14 feet 8 inches tall. It will replace
24 the existing 629 square foot resort cabin located at 58 Island Marble Lane within the
25 existing footprint. There will be no water service to the viewing pavilion.

26 16. The applicant also seeks approval to build 3 (three) sets of pedestrian Beach Access
Structures in three separate locations on tax parcels 340411005 and 340411003. In the
Staff Report, application materials, and hearing testimony, the Beach Access Structures
are/were called “beach stairs,” “Stairs,” “set of stairs,” “stairway,” and other similar terms,
all of which mean the same thing.

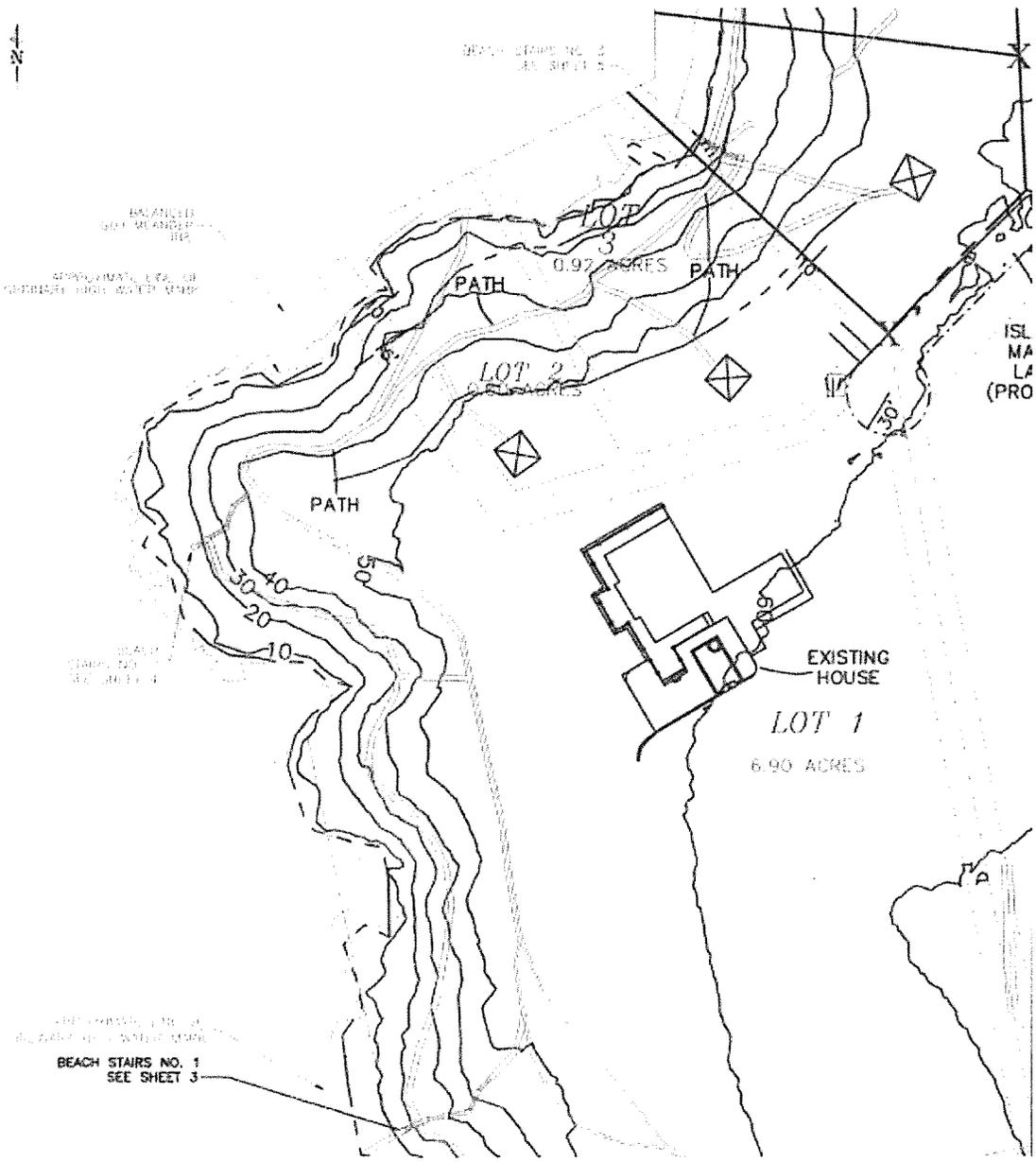
17. All of the proposed Beach Access Structures would be constructed with galvanized
steel framing with grating on the landings and stair treads. The stairs will be 3.5 feet wide
with 4x4 foot landings. The handrails and pin piles will be made of 2-inch diameter

galvanized steel.

18. Beach Stairs 1 and 2 will be located on tax parcel number 340411005. If approved, Beach Stairs 3 would be located on TPN 340411003, where the golden paintbrush restoration area would be impacted.

19. All 3 sets of proposed Beach Stairs are designed to connect lower and upper existing pedestrian paths to provide direct access to isolated beaches below the steeply sloping shoreline bank. The existing trails were built years ago as part of the old resort. Some areas where these structures will be located will require trimming of existing vegetation. The following illustration depicts the property and proposed locations for all three sets of requested beach access stairs.

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1 ***Review process.***

2 20. On September 28, 2016, Stephanie Johnson O'Day, attorney for Orca Dreams LLC,
3 submitted a request for a code interpretation to the County regarding this project, asking (1)
4 what the permit path would be to replace the two subject cabins with a greenhouse or
5 gazebo, and (2) would the County look at these existing structures as nonconforming uses
6 or nonconforming structures. The code interpretation for this project is PINT00-16-0006,
7 which is included in the record as *Exhibit 6*. The County determined that the existing
8 cabins are nonconforming as to use because they were commercial and new commercial
9 uses are not allowed in the shoreline.

10 21. The County determined that conversion of the nonconforming cabins into a
11 conforming residential accessory use is allowed subject to the approval of a shoreline
12 substantial development permit because the proposed uses are not a named accessory use.
13 The replacement structures must be contained within the existing footprint of the old
14 cabins. The extent of nonconformity may not further encroach upon or extend into areas
15 where construction or use would not be allowed for new development or uses. The
16 proposed residential accessory structures will remain nonconforming to the location and
17 size requirements of SJCC 18.50.330(E), Regulations—Accessory Use. *Ex. 6, Code*
18 *interpretation PINT00-16-0006, dated December 9, 2016, issued by the Director, Erika*
19 *Shook.*

20 22. There is no dispute that the Director's code interpretation was never appealed, and
21 the County's Unified Development Code expressly provides that any "*decision of the*
22 *Director interpreting the County's code shall be entitled to substantial weight.*" SJCC
23 18.10.030(D)(3). The record includes substantial evidence demonstrating how the
24 applicant fully satisfied the requirements and process identified in the Director's code
25 interpretation (Ex. 6). According due deference to such interpretation, and based on the
26 application materials, each of the two Accessory Structures merit approval, subject to
conditions recommended in the Staff Report.

27 23. Similarly, substantial evidence in the record demonstrates how Beach Stairs 1 and 2
28 have been designed to comply with all applicable approval criteria, subject to conditions.
29 Beach Stairs 1 and 2 merit approval, subject to conditions.

30 24. The Examiner concurs with the Staff Report regarding proposed Beach Stairs 3, and
31 finds that potential adverse impacts should be avoided altogether by not taking any action in
32 the golden paintbrush restoration area.

33 25. The Fairbanks Report Addendum, Ex. 8, at page 98, includes recommendations on

1 possible measures to inform contractors, flag and mark plantings of golden paintbrush
2 growing in the area around the proposed Staircase No. 3 corridor, and efforts suggested to
3 see that contractors and workers avoid disturbing the patches where golden paintbrush
grows on the property. *Exhibit 8, "Fisheries Impact Assessment Beach Stairway,
Addendum A" dated February 9, 2018 prepared by Fairbanks Environmental Services, Inc.*

4 26. Unfortunately, as with most undertakings involving humans, errors and inadvertent
5 mistakes can always occur. With respect for the efforts by the Honeywells to comply with
6 the Restoration Plan imposed on their property after unauthorized clearing and cutting
7 activities occurred about 5 years ago, the Examiner finds that authorizing construction
8 activities that present a risk of at least some potential adverse impacts, even with the most
9 dedicated property owner and well-informed, thoroughly briefed construction team, is
10 inconsistent with the purpose and meaning of "restoration", which is defined to mean: "to
11 return to an original or like condition." *See SJCC 18.20.180 "R" definitions.* Other
12 common meanings of the word "restoration" include: the act of restoring; renewal, revival,
or reestablishment; the state or fact of being restored; a return of something to a former,
original, normal, or unimpaired condition. The Restoration Plan would never have been
imposed if a prior contractor had been better supervised and informed about the
consequences and environmental risks associated with massive tree removal on a sensitive
shoreline property. The Examiner is not convinced that taking a risk in this instance is
prudent.

13 27. Building a set of beach access stairs through the golden paintbrush restoration area
14 runs directly counter to returning the area to its original or like condition. Based on the
15 record presented, the Examiner finds that placing a manmade structure through the
16 restoration area is not in the public interest, is not consistent with applicable Shoreline
17 regulations, and that by eliminating Beach Stairs 3, the remaining elements of the project
can move forward, as conditioned. Denying approval of Beach Stairs 3 would avoid
adverse impacts on the golden paintbrush restoration area.

18 28. Approving Beach Stairs No. 3 would effectively modify the Restoration Plan
19 approved by the County to address the illegal activities addressed in the code enforcement
20 matter discussed above. The Examiner is not granted express authority in the County's
code to modify a code enforcement order unless it is appealed in a timely manner. Such is
not the case here.

21 29. Even if the 3rd set of beach stairs could satisfy all applicable approval criteria,
22 construction of such stairs would first require the County's approval to modify the
23 Restoration Plan, and the Staff Report does not in any way support such modification.
24 Instead, the Staff Report recommends denial of the requested permit with respect to Beach
Stairs 3.

1 30. At the public hearing, county staff and applicant representatives credibly
2 summarized materials included in the record that demonstrate how the all parts of the
3 proposal, other than Beach Stairs 3, satisfy applicable approval criteria. No one spoke in
4 opposition to the project or offered any legal or factual basis that would serve as a basis to
5 deny the application to build all project elements other than the 3rd set of beach stairs.

6 31. The Staff Report, exhibits referenced therein, and testimony by applicant witnesses
7 at the public hearing, constitutes substantial and credible evidence demonstrating that all
8 elements of the project, other than Beach Stairs 3, can be accomplished so as to minimize or
9 prevent any adverse environmental impacts, through construction and thereafter.

10 32. Substantial evidence in the record fully supports the analysis, findings, and
11 recommendations provided in the Staff Report. Based on the record and applicable law,
12 conditions of approval have been included as part of this Decision that are reasonable and
13 capable of being accomplished.

14 33. Public notice regarding the shoreline permit application was provided in accord with
15 law. (*Staff Report; Exhibit 12*). No one appeared at the hearing to oppose the application,
16 or to challenge the recommendations made in the Staff Report. At the hearing, applicant
17 witnesses sought to explain how the 3rd set of beach stairs might actually benefit golden
18 paintbrush recovery efforts, but County staff did not change their recommendation – that
19 the 3rd set of beach stairs should not be approved.

20 ***Environmental review.***

21 19. County staff determined that the project, if designed and constructed in compliance
22 with applicable county shoreline codes and development regulations, would not result in
23 any probable, significant, adverse environmental impacts. The County issued a
24 Determination of Non-Significance (DNS) for the proposal on or about April 25, 2018. *Ex.*
25 3. No one appealed or questioned the DNS. By eliminating Beach Stairs 3 from the
26 project, the remaining elements of the project are even more environmentally friendly, so
the DNS stands unchallenged without need for modification to issue this Decision.

Compliance with applicable codes and shoreline policies.

21 21. The Analysis provided in the Staff Report credibly explains how the Accessory
22 Structures and Beach Stairs 1 and 2 have been designed and can be constructed in
23 compliance with applicable county shoreline and development regulations, including
24 without limitation those found in SJCC 18.50.110.H.

1 22. Except for Beach Stairs 3, the Record includes credible, un rebutted and substantial
2 evidence that, as conditioned, the application meets requirements to approve the Substantial
3 Development Permit. (See Staff Report, Application materials; Testimony of Ms. Shaw;
4 Testimony of Ms. Thompson).

5 23. Except as modified herein, all statements of fact and findings included in the Staff
6 Report are adopted by the Examiner as findings of fact supporting this Decision.

7 V. CONCLUSIONS OF LAW.

8 1. Based on the record, particularly the County's recommendation of approval for all
9 project elements other than Beach Stairs 3, with conditions, and the applicant's input as
10 reflected in the Staff Report and supporting exhibits, includes a preponderance of
11 substantive, credible and convincing proof that the pending Shoreline permit application
12 elements regarding the Accessory Structures and Beach Access Stairs 1 and 2 satisfy all
13 applicable approval criteria, including without limitation those found at SJCC
14 18.80.110(H).

15 2. The state's Shoreline Management Act ("SMA") and the regulatory policies
16 established thereunder, including those adopted by the County and approved by the
17 Department of Ecology, does/do not prohibit all development in the shoreline. Rather, its
18 purpose is to allow careful development of shorelines by balancing public access,
19 preservation of shoreline habitat and private property rights through coordinated planning.
20 *Overlake Fund v. Shoreline Hearings Bd.* (State Report Title: *Overlake Fund v. Shorelines*
21 *Hearings Bd.*), 90 Wash. App. 746, 761, 954 P.2d 304, 312 (1998).

22 3. When it approved the County's Shoreline Master Program, the Department of
23 Ecology approved San Juan County's decision to permit expansion, redevelopment, and
24 modification of legal non-conforming developments located in the shoreline area. In so
25 doing, both the County and DOE recognized that the area in which this proposal is located
26 is an already-developed area, and that use of existing developed areas in the shoreline
should generally reduce pressure to develop untouched shoreline areas. In an ideal world,
we might well choose to preserve all shorelines in a natural, undisturbed state. But the
Shoreline Management Act, DOE and the County understand that, in a practical world,
development pressures exist and permitting a range of uses is necessary to accommodate
those pressures. *Overlake*, 90 Wash. App. 746, 762-63.

4. As noted earlier, a final local government decision approving a Shoreline
Substantial Development Permit and a Shoreline Conditional Use Permit must be filed with

1 and is subject to review and approval, approval with conditions, or denial by the
2 Washington Department of Ecology. WAC 173-27-130, and -200. The record established
3 during the open-record public hearing process provides credible, un rebutted evidence and
recommendations that are (and should be) more than sufficient to satisfy the DOE approval
criteria for the Shoreline permit addressed herein.

4 5. Except for Beach Stairs 3, the requested shoreline permit for project elements
5 identified in the application materials is fully supported by evidence in the record and meets
6 all applicable approval criteria. No one offered any credible information or evidence that
7 would justify denial of any project element other than Beach Stairs 3. Therefore, the
8 requested shoreline permit for all elements other than Beach Stairs 3 should be approved.

9 6. Any finding or other statement contained in a previous section of this Decision that is
10 deemed to be a Conclusion of Law is hereby adopted as such and incorporated by reference.

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VI. DECISION, CONDITIONS OF APPROVAL.

Based on the record, and for the reasons set forth above, the Shoreline Substantial Development Permit for Beach Access Stairs 3 is denied, but the requested Shoreline Substantial Development Permit for a Pavilion, Tea House, and Beach Access Stairs 1 and 2 is approved, subject to the following conditions of approval:

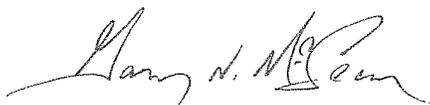
1. The Shoreline Permit issued in this Decision authorizes the development of: a “tea-house” and “viewing pavilion” to be built in the same footprint as two existing cabins that will be demolished on tax parcel number 340411005; and two sets of Beach Access Stairs, known as Beach Stairs 1 and 2, to be located on tax parcel number 340411005.
2. Best Management Practices to control erosion during construction as proposed and identified in the Staff Report and application materials shall be followed at all times. Disturbed areas shall be replanted with native vegetation to help prevent future erosion and siltation.
3. Proof of an adequate potable water supply and septic facilities shall be required at the time a building permit for the two accessory structures is submitted.
4. Proof of compliance with the Stormwater Management Plan dated January 2014 prepared by Boundary Water Inc. and approved for BUILDG-15-0105 for the entire development area is required at the time building permit applications are submitted.
5. Beach Stairs 1 and 2 shall be constructed in the location shown on the site plan and shall not exceed the height, dimension or location identified in the approved application materials for the proposed structures.
6. The foot of Beach Stairs 1 and 2 shall be located at least one foot above base flood elevation.
7. Beach Stairs 1 and 2 shall be constructed of nontoxic materials.
8. The construction sequence and parameters in the Fisheries Impact Assessment in Exhibit 7 shall be followed.

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9. All development authorized by this shoreline permit shall be consistent with local, state and federal standards applicable to any aspect of the project, and the applicant shall comply with all professional report conclusions and recommendations submitted in connection with these Shoreline Permit and associated approvals issued by San Juan County for this project, as approved, referenced, relied-upon, and/or modified by the County. Further, the applicant shall obtain any associated permit, license, or approval required by any state, federal, or other regulatory body with jurisdiction over aspects of the project; and any conditions of other regulatory agency permits, licenses, approvals or leases required for the project shall be considered conditions of approval for this shoreline permit.

10. Failure to comply with any terms or conditions of this Shoreline Substantial Development Permit may result in its revocation. Failure to comply with these Conditions of Approval shall be grounds for rescission of the Shoreline Permit. As provided in SJCC 18.80.110(L), captioned "Rescission of Shoreline Permits," any shoreline permit may be rescinded by the hearing examiner pursuant to RCW 90.58.140(8), upon the finding that the permittee has failed to comply with the terms and conditions thereof. In addition, if the permittee is denied any other permit or authorization required by a state or federal agency with jurisdiction over aspects of the Project, the underlying shoreline permit may be rescinded.

ISSUED this 5th Day of September, 2018



Gary N. McLean
Hearing Examiner

FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DECISION – APPROVING PORTIONS OF ORCA
DREAMS LLC SHORELINE SUBSTANTIAL
DEVELOPMENT PERMIT APPLICATION FOR A
PAVILION, TEA HOUSE, AND BEACH STAIRS,
SUBJECT TO CONDITIONS – PSJ000-17-0011

GARY N. MCLEAN
SAN JUAN COUNTY HEARING EXAMINER

Effective Date, Appeals, Valuation Notices

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Hearing Examiner decisions become effective when mailed or such later date in accordance with the laws and ordinance requirements governing the matter under consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be subject to review and approval by the Washington Department of Ecology, pursuant to RCW 90.58.140, WAC 173-27-130 and/or SJCC 18.80.110.

Decisions of the Hearing Examiner are final and not subject to administrative appeal to the San Juan County Council, unless the County council has adopted, by ordinance, written procedures for the discretionary review of such decisions. See Section 4.50 of the San Juan County Home Rule Charter and SJCC 2.22.100.

Depending on the subject matter, this decision may be appealable to the San Juan County Superior Court or to the Washington State Shorelines Hearings Board. State law provides short deadlines and strict procedures for appeals and failure to timely comply with filing and service requirements may result in dismissal of any appeal. See RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to promptly review appeal deadlines and procedural requirements and confer with advisors of their choosing, possibly including a private attorney.

Affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
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**GARY N. MCLEAN
SAN JUAN COUNTY HEARING EXAMINER**